

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CC Docket No. 92-90

REPLY COMMENTS OF CMOR

As we described in our initial comments, CMOR is the national trade association dedicated to the continuous improvement and enhancement of the survey research process. Almost without exception, the parties filing comments in this proceeding – including regulators as well as representatives of the private sector – recognize that the TCPA is intended to deal with and only with “telephone solicitation” calls, those which promote or encourage the purchase of goods and services. Since genuine survey research calls do not fall within this category, the views expressed by these commenting parties support the conclusion that the Commission can and should resolve the ambiguities of its current rules by adding a separate subsection which provides that the use of the telephone and of telephone technology for legitimate survey research are not governed by the TCPA or the Commission’s rules. Although we believe that the scope of the exemption we proposed in our initial comments is absolutely clear, we submit these reply comments to emphasize that selling under the guise of research is not legitimate survey research and would not be exempt. We also briefly re-emphasized the central importance of allowing legitimate survey research calls to be made to wireless telephone subscribers. In support, the following is stated:

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As we pointed out in our initial comments, survey research is the scientific process of gathering, measuring public opinion, behavior and preferences. While survey research unquestionably includes the gathering of opinions and preferences concerning products and services, that is part, but by no means all, of the topics that are subjected to survey research. More importantly, even in application to products and services, the purpose of survey research is not to sell or even to encourage the sale of goods or services. Nor is it the purpose of survey research to generate leads – identify particular consumers – who might be interested in purchasing a particular product or service.

In light of several of the comments filed in this docket, it bears emphasis that selling under the guise of research is not legitimate survey research. This practice – called “Sugging” by the industry – includes the use of pseudo survey research as a means of list generation which subsequently results in a sales call; Sugging also includes calls in which the survey is, in reality, a pretext and the call actually intended to promote a particular product or brand of product. These practices are broadly prohibited by industry association codes and guidelines. More importantly, Sugging is a deceptive marketing or advertising practice and is therefore violative of the Federal Trade Commission’s telemarketing sales rule, as well as the telemarketing and/or consumer protection statutes in virtually all of the states, all of which requires that the truthful purpose of the call be promptly disclosed.

Since there are, thus, other means of preventing and suppressing Sugging, it may not be strictly necessary for the FCC to deal with this problem. **At** the same time, the Commission must categorically reject the view that “residents now consider any unsolicited call” – including legitimate survey calls – to constitute “aimless intrusions.”

¹ See Comments of Private Citizen, Inc. at 4

The characterization itself is utterly inaccurate: legitimate survey research is not “aimless;” survey research is carefully developed and designed to produce statistically meaningful information resulting in very few calls to any individual consumer over extended periods of a year or more.

Legitimate survey calls are sharply distinguishable from Suggs, as a number of states have recognized.² The value of survey research has repeatedly been recognized by business and policy decision makers, including the FCC itself. Thus, the Commission can and must clarify its rules to eliminate the ambiguities we have noted in our initial comments. It should clearly and unambiguously specify that all calls for legitimate survey research purposes are categorically exempt from the TCPA.

These considerations apply with equal, if not greater, force to the removal of restrictions on calls to wireless phones for legitimate survey research purposes. The fundamental value of survey research is that it provides a statistically reliable depiction of public opinion, behavior or interests. Bias – both statistical and non-statistical – must be carefully avoided. To do this, the survey research organizations take extreme care in the development of survey instruments and in defining the universe of potential respondents by demographic or other relevant characteristics to assure that the results of the survey are representative and statistically meaningful. Manifestly, a central component of statistical rigor is the selection of a survey sample that is appropriately reflective of the targeted universe.

If all survey research calls are indiscriminately lumped in the same category as Suggs and subjected to the Commission’s rules governing calls to wireless telephone

² See Comments of CMOR at 6

subscribers, there will inevitably be a diminution in the available sample population with unintended and untoward effects on survey research.


In his testimony at the recent Oversight hearings in the Senate, Chairman Powell pointed out that 2 in 10 consumers have a wireless instrument as their “primary phone.”³ That was not the case when Congress passed the TCPA in 1991. Moreover, at that time, virtually all calling plans were based upon the called party pays system; and that is equally no longer the case. In his testimony, Chairman Powell further stated that one of this Commission’s primary objectives is to remove regulatory barriers and to promote and further competition, both within the wireless industry and between providers of wireless service and their land line competitors. These policies will almost certainly increase the percentage of the population that use wireless telephones as their exclusive or primary line and are equally likely to increase the variety of calling plans that wireless telephone subscribers are offered.

Given the changes that have occurred and are occurring in the market place, the Commission can and must read the provision of the TCPA dealing with wireless calls to be faithful with its original purpose. The primary concern underlying that provision was that wireless subscribers should not be required to pay for a large number of unsolicited calls. Exempting survey research calls – as well as other types of non-commercial calls – from those prohibitions is entirely faithful to the original intent of the TCPA. Indeed, the TCPA specifically empowers the Commission to exempt calls made to cellular and similar wireless phones where the called party is not charged for the call. It is, both as a practical and legal matter, utterly impossible to distinguish wireless subscribers by

³ The State of Competition in the Telecommunications Industry: Hearing before the Senate Comm. on Commerce, Science and Transportation, 108th Cong. (2003) (Statement of Michael K. Powell, Chairman, FCC).

particular calling plan. The burden caused by survey research calls on wireless subscribers is so nominal as to be trivial. Thus, such calls do not offend the fundamental purposes of the wireless phone provisions of the TCPA. By contrast, if restrictions are applied to legitimate survey calls, as well as to Suggs, the universe of available respondents while definitionally be skewed and the value of legitimate survey research diminished. In reviewing its rules governing wireless phones, the Commission must sharply distinguish between Suggs and legitimate survey research and should, at the minimum, establish a separate and specific exemption for legitimate service research calls made to wireless phones.

Respectfully submitted,


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